IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

MFA.No. 167 of 2001

OP MV.442/1997 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM
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APPELLANT/PETITIONER IN OP MV

BALAKRISHNAN, S/O. MALAKANDA THARAKAN,
MANIYATHIL HOUSE, THIRUVAZHIYODE P.O.,
CHERUPILLASSERY, OTTAPALAM TALUK,
PALAKKAD DIST.

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS/RESPONDENTS
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1. **R.BALACHANDRAN, S/O. RAMAN CHETTIYAR,**
   ANNAPOORNI STREET, METTUPALAYAM,
   641 301, (DRIVER OF LORRY NO. TD1-7596).

2. **THIRU. S.RANGASAMY, S/O. THIRU. SUBBAIYA GOUNDER,**
   11 SRVS COMPOUND, BANGAOWMEDU, JAYANTHI COLONY,
   KARAMADAI ROAD, METTUPALAYAM, 641 301 (R.C. OWNER OF
   LORRY NO. TDI-7596)

3. **M/S. NEW INDIA ASSURANCE CO. LTD.,**
   BRANCH OFFICE, METTUPALAYAM, 641 301 (INSURER OF LORRY NO.
   TDI-7596) .

4. **K.HAMSA, S/O. MOIDEENKUTTY, KULUKKAMPARA HOUSE,**
   VEERAMANGALAM, CHERUPPILLASSERY, OTTAPALAM TALUK,
   PALAKKAD DIST. (OWNER OF TRACTOR NO. KL-9/B-1922)

5. **UNITED INDIA INSURANCE CO. LTD.,**
   BRANCH OFFICE, FAIZAL BUILDING, MAIN ROAD,
   OTTAPALAM 679 101 (INSURER OF TRACTOR NO. KL-9B/1922)

R3 BY ADV. SRI.K.K.M.SHERIFF

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 30/10/2007,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.167 OF 2001 ()

Dated this the 30th day of October, 2007

J U D G M E N T

KOSHY,J.

Appellant claimant met with an accident on 24.12.1996 and he suffered serious injuries. Petitioner is a truck driver and accident occurred while he was driving his tractor bearing registration No.KL 9B 1922 from Veeramangalam to Kunnathoore. Then the lorry driven by the 1st respondent hit the tractor driven by the appellant and as a result he suffered serious injuries. According to him, accident occurred due to the rash and negligent driving of the 1st respondent driver of the lorry which was insured by the 3rd respondent Insurance company. The tribunal found that accident occurred as alleged by him but against a claim of compensation of Rs.2,25,000/-, only an amount of Rs.75,000/- was awarded. Only quantum of compensation is disputed in this appeal.

2. As a result of the accident, main injury suffered was the fracture of left ankle. He was initially hospitalised at M.C.H. Hospital for five days and he underwent surgery. He was treated as inpatient for about 21 days because of the fracture of the ankle. He is not able to drive the tractor or heavy vehicle any more. Ext.A5 is the wound certificate which shows that there is a grievous fracture of both bones of left leg and there is fracture of medial malleolus with suspected fracture of lower ned of fibula (L). Even though Exts.A10 and A11 medical certificates shows that he has got 40% disability, according to the tribunal, it can be only disability to the left leg. Being the fracture of left ankle involving the distal ends of tibia and fibula, it is contented that his loss of earning capacity is seriously affected. Tribunal did not accept the compensation on a scientific method but a lump sum compensation of Rs.20,000/- for disability was awarded. We are of the opinion that tribunal considering the injury should have assessed atleast 10% whole bodied disability even if 40% disability is also to be granted. The tribunal has taken his monthly wages as Rs.1,500/- even though he was a truck driver with a heavy

vehicle licence. It is true that accident occurred in 1996. Even in 1996 a heavy driver with a heavy vehicle licence and badge will get more than Rs.100/- per day and 25 days he will get work and thus Rs.2,500/- can be fixed as the monthly income. He was 33 years old. Taking guidelines from the 2nd Schedule, 17 can be fixed as the apt multiplier. If that be so, compensation payable for disability will be Rs.2,500 x 12 x 17 x $^{10}/_{100}$ = Rs.51,000/-. Therefore claimant will be entitled to an additional amount of Rs.31,000/-. Tribunal has held that he will not be able to do work for a period of six months and for actual loss of earning during treatment period, Rs.9,000/- was granted. Since we have increased his monthly income as Rs.2,500/-, he is entitled to another Rs.6,000/- on that count. It is submitted that compensation awarded for pain and sufferings was only Rs.9,500/- even though he was unable to work and under treatment for about six months. But Rs.11,000/- is given as injury compensation. Injury compensation cannot be granted over and above the disability compensation and it is only granted for loss of amenities. Therefore total compensation for pain and sufferings and loss

of amenities comes to Rs.20,500/- and no enhancement is necessary. We are of the opinion that just and reasonable compensation amount was granted under other heads and additional amount of Rs.37,000/- should be deposited by the 3rd respondent Insurance company with 7.5% interest from the date of application till its deposit over and above the decreed amount by the tribunal. Appeal is accordingly partly allowed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.167 OF 2001 ()

J U D G M E N T

30th October, 2007